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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 252.

SOUTHERN RAILWAY CO., PLAINTIFF IN ERROR,

vs.

JOHN H. ALLISON, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF NORTH CAROLINA.

BRIEF OF JOHN H. ALLISON.

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vs.

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BRIEF OF JOHN H. ALLISON.

FACTS.

This was an action brought in the Superior Court of McDowell County, North Carolina, in which it was sought to recover damages amounting to $6,000.00, alleged to have been sustained by the plaintiff below by reason of personal injuries caused by the negligence of the Southern Railway Company.

There was presented to the Superior Court of McDowell County in due form an order of the Circuit Court of the United States removing the case to that Court for trial upon the ground of diverse citizenship and local prejudice. Accompanying the order of removal was a solemn admission of counsel made in open Court to the effect that the Southern Railway Company had complied with the Act of the Legislature of North Carolina, Chapter 62 of the Acts of 1899. (See page 14 of the Record). The Superior Court of Mc-

Dowell County thereupon held that the Southern Railway Company was a domestic corporation chartered under the laws of North Carolina, and that, as the plaintiff was admitted to be a citizen of that state, the State Court had jurisdiction to try the case, and refused to surrender its jurisdiction. The Southern Railway Company, the defendant, excepted to this ruling. There was a trial and a verdict for the plaintiff below for $2,000.00, from which the Southern Railway Company appealed to the Supreme Court of North Carolina. The Supreme Court of that State affirmed the ruling of the Court below as appears from the opinion of Mr. Justice Montgomery, on page 16 of the printed Record, and held with the Superior Court of McDo vell County that, upon the face of the Record and admission appearing in the case on appeal, the Southern Railway Company was at the time of its application for removal, and still was a domestic corporation within the State of North Carolina, and subject to be sued in the State Courts as any citizen of that state. This case is here upon a Writ of Error to the Supreme Court of North Carolina sued out by the Southern Railway Company to have reviewed this ruling of that Court.

Chapter 62 of the Acts of 1899, with the terms of which plaintiff in error admitted it had complied, is as set out on page 2 of Brief of Plaintiff in Error.

ARGUMENT.

When the order for removal was filed in the State Court, and the admission above referred to was made, there was no question of fact for the Court to pass on in deciding whether the State Court should retain jurisdiction of, and try the case. The only question presented was as to whether the plaintiff in error was a domestic corporation, and this was a question of law. When this is so it is the duty of the State Court to pass on the question and retain jurisdiction.

The plaintiff in error submits on page five of its Brief that there are two questions presented:

(1.) Has the State Court the right to pass upon the ques-

tion, whether a corporation which has been adjudged by the United States Court to be a foreign corporation, in a proceeding to remove to the United States Court on the ground of prejudice and local influence, is a domestic corporation, or is the finding by the United States Court conclusive upon the State Court?

(2.) Has a corporation, which is organized under the laws of some other State than North Carolina, and which has complied with the terms of the domestication act of North Carolina, the right to remove a case to the U. S. Circuit Court?

The statement of the first question by the Southern Railway Company, and the argument thereon, ignores the formal admission it made that it had complied with the requirement of the Statute above quoted. (See page 14 of the printed Record.)

This was a voluntary admission made for the purpose of removing any question of fact, and to present a naked question of law. This was done and the Court ruled on it as such. The plaintiff in error cannot, therefore, contend that there was any dispute as to the facts. How could there be a dispute as to the facts when it agreed what the facts were?

The plaintiff in error does not object to a decision of this case now, on its merits. (See page 9 of its Brief).

The second question stated by the plaintiff in error is substantially the real question presented to this Court.

It has been thoroughly considered and decided by the Supreme Court of North Carolina in the following cases:

Debnam vs. Telephone Company, 126 N. C., 831.
Layden vs. Knights of Pythias, 128 N. C., 546.
Allison vs. Southern Railway Co., 129 N. C., 336.

The plaintiff in error presents the question in this form:

"Has a corporation, which is organized under the laws of some other state than North Carolina, and which has complied with the terms of the domestication act of North Carolina, the right to remove a case to the U. S. Circuit Court?"

The answer to this question, in this case, depends on whether the Southern Railway Company by compliance with the Act of 1899, above quoted, was chartered as a North Carolina Corporation, or was licensed as a foreign corporation to do business in the State of North Carolina.

This Court has said, in Martin vs. B. & O. R. R., 151 U. S. on page 677: "A railroad corporation, created by the laws of one state, may carry on business in another, either by virtue of being created a corporation by the laws of the latter state also, as in

Railroad Co. vs. Vance, 96 U. S., 450.
Memphis & Char. R. R. vs. Alabam, 107 U. S., 581.
Clark vs. Barnard, 108 U. S., 436.
Stone vs. Tannars Co., 116 U. S., 307.
Graham vs. Boston Har. & Erie R. R., 118 U. S., 161.

Or by virtue of a license, permission, or authority, granted by the laws of the latter state, to act in the state under its charter from the former state. (Citing cases.) In the first alternative, it cannot remove into the Circuit Court of the United States, a suit brought against it in a Court of the latter state, by a citizen of the state, because it is a citizen of the same state with him. Memphis & Char. R. R. vs. Alabama above cited."

Whether the Southern Railway Company had the right to remove into the Circuit Court of the United States this action brought against it by a citizen of North Carolina in a Court of that State, therefore, depends upon the question whether this Company was a corporation created by the laws of Virginia only, or by the laws of North Carolina also. This is the language of the inquiry, with the names of the States and Railroad Company substituted, as stated by this Court in Martin vs. R. R. near bottom of page 677 of 151 U. S.

After reviewing in that case, the statutes and decisions of Virginia and West Virginia upon this point, this Court concludes, at top of page 684:

"There does not appear, therefore, to be such a settled course of adjudications in the Courts of West Virginia that the Baltimore & Ohio Railroad Company has been made by the Statutes of Virginia, a corporation of that State and of the State of West Virginia, as should induce this Court, when the question arises under an act of Congress defining the jurisdiction of the Courts of the United States, to surrender its own opinion and to reverse the conclusion at which it deliberately arrived in Railroad Company vs. Harris, and which it has repeatedly approved." The conclusion to which the Court referred and from which it declined to recede was that the Baltimore & Ohio Railroad Co. was a corporation of Maryland, licensed and not chartered, to do business in Virginia. If it had been decided by the Supreme Court of West Virginia that the Baltimore & Ohio Railroad Company had been chartered in Virginia, the clear intimation is that this Court would have followed its decision.

The decisions of the Supreme Court of North Carolina are uniform to the effect that a compliance with the act of 1899, chapter 62, by the plaintiff in error, or a like corporation, charters it in North Carolina, as distinguished from licensing a foreign corporation to do business therein.

The Supreme Court of North Carolina has said in this case, as appears from 129th N. C., at page 337, and also on page 16 of the printed Record, "The reason assigned for His Honor's refusal to dismiss this action or to stay proceedings in the State Court was that the defendant had complied with the terms of the act of the Legislature of the State of North Carolina, chapter 62 of the Acts of 1899, and thereby became a corporation of the State. The ruling of His Honor is sustained by the cases of Debnam vs. Telephone Co., 126 N. C., 831, and Layden vs. Knights of Pythias, 128 N. C., 546."

In Debnam vs. Telephone Company, 126 N. C., page 841, the Supreme Court of North Carolina has decided as follows: "Construing the Acts of February 10th, 1899, now under consideration, as a North Carolina Statute, it is clear to us that the legislative intent was, not to grant a mere license under

which foreign corporations might do business in this State, but to require all such corporations to become domestic corporations either by re-enactment or adoption. Whatever the process may be called, the intent of the Act, as well as its legal effect, was to make all corporations complying with its conditions domestic corporations of the State of North Carolina. *Its effect was to charter and not to license.*" Further, the Court says: "Whatever may be the wording of the Act, its effect as well as its legal intent, is to create a domestic corporation out of the stockholders of the foreign corporation."

There are established by these authorities two propositions:

1st. That the Southern Railway Company is a domestic corporation.

2d. That being such corporation it was not entitled to have the case removed to the Circuit Court of the United States.

In the case of Memphis & Char. R. R. Co. vs. Alabama, 107 U. S., on page 584, the Court reviews the Statutes of the State of Alabama in considering whether a Tennessee corporation is licensed to do business in the State of Alabama, or whether there is a chartering of the corporation in the latter State, and concluded that it was the manifest understanding and intention of the legislature of Alabama, that the Acts done by the corporation in compliance with the Alabama Statute amounted to re-chartering in that State. The corporation was held not to be entitled to a removal of the case against it to the United States Circuit Court. The plaintiff in error, in its brief, reviews some of the cases it relies on to sustain its position.

Its quotations from the opinion of the Supreme Court of the United States in the cases of St. L. & S. F. Ry. Co. vs. James, 161 U. S., 545, and Louisville N. A. & C. R. R. vs. Louisville Trust Company, 174 U. S., 552, its analysis and treatment of these cases, and conclusion that they are absolutely in the face of the North Carolina case of Debnam vs. Telephone Co., 126 N. C., 831, and M. & C. R. R. vs. Alabama, 107 U. S., 581, is all done by ignoring the most patent distinctions between two classes of cases and by failing to observe the real

point decided in the cases in the 161 and 174 U. S. In Debnam vs. Telephone Co., 126 N. C., Layden vs. Knights of Pythias, 128 N. C., Allison vs. R. R. 129 N. C., Memphis & Char. R. R. vs. Alabama 107 U. S., Martin vs. B. & O. R. R. 151 U. S., and that line of cases, many of which are cited in the last named case, the question was as it is here: when a corporation is chartered in one state and afterwards is chartered in another, and is sued in the State Courts of the last state in which it is chartered, by a citizen of that state, can it remove the cause to the United States Courts?

There is no decision of the Supreme Court of the United States answering this proposition in the negative. It is held in some cases that they should be removed because the Company was not re-chartered, but merely licensed to do business in the second state.

In St. L. & S. F. Ry. Co. vs. James, 161 U. S., Louisville, N. A. & C. R. R. vs. Louisville Trust Co., 174 U. S., and that line of cases the question was: If a corporation is chartered in one state, and afterwards is chartered in another state, which state is it a citizen of for purposes of jurisdiction *when it sues or is sued in the United States Courts?*

The answer to that question in the cases relied on by plaintiff in error was, that the corporation is a citizen of the state which first chartered it.

The distinction between the two lines of cases, and the fact that the plaintiff in error entirely misconceives and overlooks the point decided in the cases relied on by it is nowhere more clearly made to appear than in the two cases cited by it from the 161 and 174 U. S.

In the first of these cases Mrs. James, who was a citizen of Monett, Missouri, brought suit in the Circuit Court of the United States for the Western District of Arkansas against the St. Louis & San Francisco Ry. Company for negligently causing the death of her husband at Monett, Missouri. The railway company was first chartered by the State of Missouri in 1876. It was contended by Mrs. James that it was afterwards also chartered by the State of Arkansas, and that she

being a citizen of Missouri, and the railway company, a corporation of Arkansas, she could bring her action in the United States Court for the latter state. Mr. Justice Shiras, delivering the opinion of the Court, says, on pages 559 and 560 of the 161 U. S. Supreme Court Reports: "Memphis & C. R. R. Company vs. Alabama was where an action had been brought by the State of Alabama for the use of a county of that state, *in a Court of that state*, [Italics mine] against a railroad corporation whose road passed through that state and county, to recover the amount of a county tax assessed upon its property, and the case was removed into the Circuit Court of the United States for the Western District of Alabama, and upon motion the cause was remanded to the State Court upon the ground that the defendant, although incorporated in Tennessee also was a corporation of the State of Alabama. On error the judgment of the Court below was affirmed, and the Court, per Mr. Justice Gray, said: 'The defendant being a Corporation of the state of Alabama has no existence in this state as a legal entity or person, except under and by force of its incorporation by this state; and, although also incorporated in the State of Tennessee, must, as to all its doings within the State of Alabama, be considered a citizen of Alabama, which cannot sue or be sued by another citizen of Alabama in the Courts of the United States.'" After reviewing many other cases Mr. Justice Shiras sums up the law of the case under consideration on page 562 to be this: "There is an indisputable legal presumption that a state corporation, *when sued or suing in a Circuit Court of the United States* [Italics mine] is composed of citizens of the state which created it, and hence such a corporation is itself deemed to come within that provision of the Constitution of the United States which confers jurisdiction upon the Federal Courts in controversies between citizens of different states."

"It is competent for a railroad corporation organized under the laws of one state, when authorized so to do by the consent of the state which created it, to accept authority from another state to extend its railroad into such state, and con-

trol, by lease or purchase, railroads therein, and to subject itself to such rules and regulations as may be prescribed by the second state. Such legislation on the part of two or more states is not, in the absence of inhibitory legislation by Congress, regarded as within the constitutional prohibition of agreement or compacts between states. *Such corporations may be treated by such of the states whose legislative grants they accept as domestic corporations.*" [Italics mine.] In the other of these cases the plaintiff Louisville N. A. & Chicago Ry. Co., was originally chartered in Indiana, in January, 1873, and the defendants were corporations of Kentucky. The plaintiff brought suit against the defendants in the United States Court for Kentucky. The defendants entered, among other pleas, a plea to the jurisdiction, asserting that the plaintiff had been chartered in Kentucky in 1880, and thereby became a citizen of that state.

The Supreme Court upon a writ of error sustained the jurisdiction of the United States Court, Mr. Justice Gray delivering the opinion. He says, on page 562: "This Court has often recognized that a corporation of one state may be made a corporation of another state by the legislature of that state, in regard to property and acts within its territorial jurisdiction.

> Ohio & Miss. R. R. Co. vs. Wheeler, 1 Black, 286–297.
> B. & O. R. Co. vs. Harris, 12 Wall, 65–82.
> Chi. & N.W. R. R. Co. vs. W. Litton, 13 Wall, 270–283.
> I. & St. L. R. Co. vs. Vance, 96 U. S., 450–457.
> **Memphis & Char. Ry. Co. vs. Alabama,** 107 U. S. 581.
> Clark vs. Banard, 108 U. S., 436–451.
> Stone vs. F. Loan & Trust Co., 116 U. S., 581.
> Graham vs. B. H. & E. R. R. Co. 118 U. S., 161–169.
> Martin vs. B. & O. R. R. Co., 151 U. S., 673–677."

And further on page 563:

"But a decision of the question whether the plaintiff was or was not a corporation of Kentucky does not appear to this

Court to be required for the disposition of this case, either as to the jurisdiction or as to the merits. As to the jurisdiction, it being clear that the plaintiff was first created a corporation of the State of Indiana, even if it was afterwards created a corporation of the State of Kentucky also, it was and remained, *for the purposes of the jurisdiction of the Courts of the United States* [Italics mine] a citizen of Indiana, the State by which it was originally created."

Both of these cases cite with approval the case of Memphis & C. R. R. Co. vs. Alabama, 107 U. S., 581, and the latter case in the 174, cites the case of Martin vs. B. & O. R. R. Co., 151 U. S., and also thoroughly considers the case in the 161 U. S. The plaintiff in error is, therefore, wide of the mark when it asserts in its brief that the North Carolina cases are wrong because based on the case in the 107 U. S., and that that last mentioned case is in the face of the cases in the 161 and 174 U. S.

To sum up the law applicable to this case and the distinction between the two lines of cases, they are these: A railroad may be a corporation of two or more states. The question of whether it is chartered as a domestic corporation, or licensed to do business as a foreign corporation in any given state depends on the language of the act of the Legislature and the decisions of the Courts of that state from which the purposes and intent of the state are to be gathered. When a corporation is chartered in a state, after having been first chartered in another state, and is sued by, or sues, a citizen of the state in which it was last chartered, in the State Courts of that state, the jurisdiction of the State Courts will not be denied either by the State or Federal Courts.

Debnam vs. Telephone Co., 126, N. C., 831.
M. & C. R. R. Co., vs. Ala., 107 U. S., 581.

If such corporation sues, or is sued by a citizen of the second state in which it is chartered in the United States Courts the jurisdiction of the United States Courts will be

sustained upon the ground that in the Federal Courts the corporation is domestic in the state where its original incorporators are citizens, and it will be conclusively presumed, as a matter of law, that they are citizens of the state originally chartering it. The James case in 161 U. S. and the New Albany Company Case, in 174 U. S., above cited.

Respectfully submitted,

E. J. JUSTICE,
Of Counsel for Defendant in Error.